

SENATE JOINT RESOLUTION 699

By Herron

A RESOLUTION relative to the regulation of financial institutions.

WHEREAS, the Senate Commerce, Labor and Agriculture Committee recently held a hearing on the doctrine of federal preemption of state laws and the impact on Tennessee and its financial regulators; and

WHEREAS, two areas where tension exists between federal and state law in the fields of regulation of financial institutions are the areas relating to the jurisdiction over the operating subsidiaries of national banks and consumer protection; and

WHEREAS, operating subsidiaries of national banks engage in various financial services such as mortgages, insurance, and securities-brokerage services that are beyond the scope of the business of banking as originally conceived in the National Bank Act of 1864; and

WHEREAS, operating subsidiaries of national banks are creatures of state law, not federal law, and are incorporated under state law and in the past have applied for licenses from state regulatory authorities to operate within Tennessee; and

WHEREAS, the Office of the Comptroller of the Currency (OCC) promulgated a regulation that effectively stated that the OCC was the exclusive regulator of national banks and their operating subsidiaries and this regulation placed the OCC on a collision course with Tennessee and other state regulators of financial institutions; and

WHEREAS, in August 2003, the OCC issued a notice for public comment of a proposed rule which identified the types of state laws that are preempted concerning the requirements and restrictions on national banks' real estate lending to enable the OCC to "occupy the field" in the regulation of such activities; and

WHEREAS, the OCC published such regulation in the Federal Register, and such regulation will take effective February 12, 2004, unless the Congress acts quickly to stop the regulation from taking effect; and

WHEREAS, the OCC has appeared as amicus curiae in several recent federal court cases opposing consumer protection legislation that has been passed by various state legislatures, arguing that the legislation interfered with the power of national banks and their operating subsidiaries to engage in the business of banking; and

WHEREAS, there has been a clear, consistent, and premeditated effort by the federal government, specifically on the part of the OCC, to exercise jurisdiction in financial regulation matters that were previously the jurisdictional domain of the states; and

WHEREAS, certain interpretations of law by the OCC and the Office of Thrift Supervision have prevented the application of state consumer protections to federally-chartered financial institutions, and frustrate the efforts of state regulators and legislators to extend these protections to all citizens; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED THIRD GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that this General Assembly urges the United States Congress to intervene with the OCC on behalf of the citizens of the United States to halt this agency's preemption of state banking laws in order to preserve the states' rights and protect the citizens.

BE IT FURTHER RESOLVED, that the Congress is urged to hold hearings to hold hearings to explore and study the growing scope of federal preemption and the impact on regulation of financial institutions and the effects on American consumers and the seventy-five percent (75%) of the banks in the United States that are state chartered banks, and, if necessary, enact legislation to prevent the preemption and the unilateral expansion of jurisdiction over financial institutions by federal regulators without the specific endorsement of the elected representatives of the United States Congress.

BE IT FURTHER RESOLVED, that the Speaker of the Senate transmit copies of this resolution to each Senator and Representative from Tennessee in the Congress of the United States, to the Office of the Comptroller of the Currency, and to the Office of Thrift Supervision.

BE IT FURTHER RESOLVED, that an appropriate copy of this resolution be prepared for presentation with this final clause omitted from such copy.